

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

R. R., et al.,  
Plaintiffs,  
v.

OAKLAND UNIFIED SCHOOL  
DISTRICT,  
Defendant.

Case No. 13-cv-05069-KAW

ORDER DENYING DEFENDANT'S  
MOTION TO MODIFY STAY PUT

Dkt. No. 61

On July 3, 2014, Defendant Oakland Unified School District filed a motion to modify the court's February 2014 stay put order to move Student from a special day class (SDC) at Bret Harte Middle School to an SDC at Skyline High School. (Def.'s Mot., Dkt. No. 61.)

On August 7, 2014, the Court heard the motion on shortened time. The Court invited the parties to submit supplemental briefing as to whether the Court could modify stay put to place Student in a high school classroom. The District filed supplemental briefing, but Plaintiffs did not. Upon review of the moving papers, supplemental briefing, and the arguments of the parties, for the reasons set forth below, the Court DENIES Defendant's motion to modify stay put.

**I. DISCUSSION**

The District seeks to move Student from his SDC class at Bret Harte to an autism SDC at Skyline High School. (Def.'s Mot. at 2.) At the hearing, Plaintiffs were clear that they wanted Student to remain at Bret Harte until he could be placed in a permanent placement, because he has difficulty with transitions due to the nature of his disabilities.

While the Court is confident in its ability to modify Student's stay put for the purposes of promotion during the pendency of this action, the Court declines to exercise that discretion at this juncture for several reasons. First, the parties will be attending a settlement conference with a

1 magistrate judge, which may result in a global settlement that includes the 2014 IEP, which is  
2 currently the subject of separate administrative proceedings. Second, Student has difficulty with  
3 transitions, and his current placement is modifying the curriculum to meet his instant needs.  
4 Third, Student has not been promoted annually, and so the Court is not compelled to require his  
5 promotion to high school at this time.

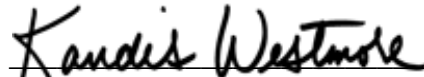
6 The Court notes, however, that the parties are in general agreement that Student should be  
7 educated with his high school-aged peers. Should the parties be unable to reach a settlement, and  
8 should this litigation become protracted, the Court would be willing to entertain another motion to  
9 modify stay put for the purposes of promotion.

## 10 II. CONCLUSION

11 For the reasons set forth above, the District's motion to modify stay put is DENIED.

12 IT IS SO ORDERED.

13 Dated: August 18, 2014

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15 KANDIS A. WESTMORE  
16 United States Magistrate Judge  
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